**Whether approved for reporting ? yes**

**For the appellant: Mr.Vinay Thakur, Advocate.**

**For respondents: Mr.J.S.Guleria, Law Officer.**

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**Deepak Gupta, J.(oral)**

This appeal by the accused is directed against the judgment of the Sessions Judge, Kinnaur Division at Rampur Bushehar in Sessions Trial No.18 of 1996 decided on 12.7.1999 whereby he has convicted the accused of having committed an offence under Section 376 IPC and sentenced him to undergo rigorous imprisonment for 3 years and to pay fine of Rs.5000/- and in default of payment of fine to suffer further rigorous imprisonment for 3 months.

The prosecution case, in brief, is that on 14.7.1995 the prosecutrix was proceeding to Pasha Kanda for extraction of Dhoop. She was accompanied by her daughter aged 4 years. The prosecutrix is a widow and had lost her husband a year earlier. When they reached Mooling, accused Basant Ram met them. He took the

abused by the accused and had gone home weeping. He reached home on 17.7.1995. The prosecutrix complained to him that she has been raped by the accused. She started crying that she is an orphan and a widow and there is none to stand by her side. Thereafter, he alongwith the prosecutrix went to the police station at Bhabha Nagar on 18.7.1995 and the complaint was lodged at 10.15 a.m.

The prosecutrix was sent for medical examination on 20.7.1995 and the doctor opined that though there were signs of struggle but there was nothing suggestive of recent vaginal penetration. The police thereafter inspected the spot and recovered some pieces of broken bangles vide memo Ext.PA. These pieces are alleged to be pieces of the bangles worn by the prosecutrix at the time of the rape. A site plan Ext.PF was also prepared. She produced her salwar worn by her at the time of the incident. As per the FSL report (Ext.PH) human blood was found on the salwar and the vaginal smear of the

the proposal that the case was lodged. He also states that Longu Ram and Nargya Chhering demanded Rs.10,000/- after the alleged incident and since he failed to make this payment a false case was got registered against him. The trial Court after going through the entire evidence convicted the accused and sentenced him as aforesaid. The accused has filed the present appeal.

I have heard Sh.Vinay Thakur, learned counsel for the appellant and Sh.J.S.Guleria, learned Law Officer for the respondent-State.

Mr.Vinay Thakur, states that the conviction of the accused is bad and the judgment of the learned trial Court is liable to be set-aside on the following grounds:

(1) That the statement of the prosecutrix does not inspire confidence and her statement without corroboration cannot be used to convict the accused;

the prosecutrix if it inspires confidence. According to Mr.Guleria, in this case there is sufficient material to show that the prosecutrix is not telling any lies. He further supports the judgment of the trial Court.

**CONTENTION NO.1:**

As far as the first contention of the appellant is concerned, by now the law is very well settled that conviction for rape can be based solely on the statement of the prosecutrix if it inspires confidence unless there are other compelling reasons to seek corroboration. With regard to this point a number of authorities have been cited before me at the Bar. I need not refer to all the authorities since the Apex Court in its latest decision in **State of H.P. vs. Asha Ram**, AIR 2006 SC 381, has succinctly laid down the law as follows:

> "5…… It is now well settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking

> of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. The evidence of the prosecutrix is more reliable than that of an injured witness. Even minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case."

The question which then arises is as to whether the statement of the prosecutrix inspires confidence and can be relied upon. Before referring to the statement, at the very outset it must be pointed out that the prosecutrix belongs to a very remote area of Himachal Pradesh. She is illiterate. She cannot speak Hindi. In fact she cannot even speak Kinnauri which is a local dialect prevalent in the District of Kinnaur. From the material on record it is apparent that she speaks a mixture of Kinnauri, Kullavi and Hindi. It has also come on record that she is a widow and though she is not deaf

alongwith her daughter was going to collect Dhoop in the area of Pasha Kanda. When she reached Mooling the accused met her. He was on a mule. He placed her daughter on the mule. Thereafter, he dragged the prosecutrix towards a slopy area where grass was growing. He pushed the prosecutrix and she fell down. He then untied the string of her salwar and raped her. According to her some blood and white fluid came out from her private part. Thereafter, the accused pushed the daughter off the mule and ran away with the mule. The prosecutrix states that she shouted and cried when she was being raped. She struggled but the accused over-powered her. She states that her plastic bangles also broke on the spot during the struggle. At this stage it would be pertinent to reproduce the observations made by the trial Court regarding the demeanour of the witness while making this part of the statement:

> "(From appearance the witness appears to be a weak and tortured person. While deposing she is gesturing violently regarding sexual

the scene of the occurrence where her brother was also present. Pieces of broken bangles were recovered. She identified the pieces of the bangles (Exts.P-2 to P-5) to be the same which she was wearing at the time of occurrence. She also identified the salwar Ext.P-6 which she was wearing at the time of occurrence. She further states that she narrated the facts of the occurrence to Dolma wife of the accused and Ram Lal at Pasha where she stayed on the night of the occurrence and after returning home she had narrated the facts to her 'Bhabhi'. According to her she returned on the day next to the date of occurrence and on that very evening her brother also returned to her village.

She has been cross-examined at length. According to her there were number of other persons from other villages collecting Dhoop at Pasha Kanda. She also states that when she narrated this incident to Dolma a number of other persons were there. She further states that though normally they spend a number of days together for collecting Dhoop she returned the very next

witness while deposing is quite agitating and in high tamper though like a troubled person she is expressing her feeling voluntarily).”

A suggestion was also put to her that she did not wear bangles and the bangles did not belong to her and belonged to someone else. She denied this suggestion. The trial Court then observed as follows:

> “(The pieces of bangles have been put around the wrist of the witness and they appear to be of the size of her wrist and they are not smaller in size.)”

She denied the suggestion put to her that the accused did not meet her nor the occurrence took place. She also denied the suggestion that she used to joke around with the accused and was trying to compel the accused to marry her and since the accused failed to do so she got a false case registered against him. The observations of the Court made with regard to the demeanour of the witness while answering the aforesaid two observations are relevant and extracted hereunder:

In my opinion, the testimony of the prosecutrix itself in the present case is absolutely true and inspires confidence. She had no reason to falsely implicate the accused. The case set-up by the accused that he has been falsely implicated because the prosecutrix was compelling him to marry her is not believable. The statement of the witness and her demeanour which has been recorded by the learned Trial Court inspires confidence. It shows that this witness has told the truth and has not told any lies. She has given a straight forward version like a simple villager without trying to pad it or add any falsehood.

Though according to me corroboration was not needed there is sufficient corroboration also in the present case. PW-6 Nargya Chhering has stated that he had gone to Daya Kanda for digging out Dhoop. When he was returning home, Longu Ram met him near Mooling and informed him about the occurrence and told him that his sister had been raped by accused Basant Ram. When he

returned on the same day and he went to the police station on the 3rd day. He admits that he is illiterate and the complaint was not written by him but was written by the Pradhan of the Panchayat.

Kesarmani, sister-in-law of the accused appeared as PW-7 has also supported the prosecution version. In her cross examination she states that the occurrence took about 2 years back and she does not remember the month. She however states that it was the month of 'Ashahd'. She further states that the dates mentioned by the police are correct.

PW-8 is Longu Ram. According to him, sometimes in the month of July when he was going to Pasha Kanda the prosecutrix was returning from there alongwith her daughter. She told him that the accused had raped her on the previous day. The witness states that as the prosecutrix is his cousin he did not ask her the details and advised her to return to her village. Thereafter, he met her brother Nargya Chhering and informed him

with regard to the date on which the occurrence occurred. The FIR admittedly has been lodged on 18th July, 1995. According to PW-5 the FIR was lodged on the basis of written complaint Ext.PE. This complaint is not signed by the prosecutrix but is signed by her brother PW-6. As already noted above PW-6 is illiterate. In this complaint it is mentioned that the incident took place on 14th July, 1995. He further states that he returned on 16.7.1995 when Longu Ram informed him that he had met her sister. Thereafter, the complaint was lodged on 18.7.1995.

The Apex Court in **State of H.P. vs.Gian Chand,** AIR 2001 SC 2075 has observed as follows:

> "Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the Court in its guard to search if any explanation has been offered for the delay, and if offered, whether it is

Apex Court in **State of Karnataka vs. Mapilla P.P. Soopi,** (2003) 8 SCC 202. In my opinion, this judgment is not at all applicable since all that has been said in the said judgment is that undue delay in lodging the complaint without any explanation has also contributed to the doubt in the prosecution case.

Mr.Vinay Thakur, has also cited a case titled **Devinder Singh and others vs. State of H.P.,** 2004 SCC (Cri) 185, in support of his contention that since there was delay, therefore, the prosecution case could not be believed. This judgment is on totally different facts. In that case it stood proved that for 6 days the prosecutrix had not narrated the incident to anyone and the FIR was lodged after six days. The present case is totally different. In the present case first of all the rape took in a remote area from where the prosecutrix had to walk back to her home, then because of illiteracy she alongwith her brother went to Pradhan and thereafter went to the Police Station. The entire chain of events has been explained and there is no un-explained delay.

degrades and humiliates the victim and where the victim is a helpless innocent child or a minor, it leaves behind a traumatic experience. A rapist not only causes physical injuries but more indelibly leaves a scar on the most cherished possession of a woman i.e. her dignity, honour, reputation and not the least her chastity. Rape is not only a crime against the person of a woman, it is a crime against the entire society. It destroys, as noted by this Court in **Bodhisattwa Gautam v. Subhra Chakraborty** the entire psychology of a woman and pushes her into deep emotional crisis. It is a crime against basic human rights, and is also violative of the victim's most cherished of the fundamental rights, namely, the right to life contained in Article 21 of the Constitution. The courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitized Judge, in our opinion, is a better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos."

cannot be used as a ritualistic formula for discarding the prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the court is to only see whether it is satisfactory or not. In case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand, satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of the prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen her. That being so, the mere delay in lodging of the first information report does not in any way render the prosecution version brittle. These aspects were highlighted in **Tulshidas Kanolkar v. State of Goa.**"

As observed above, the prosecutrix and her family are totally illiterate and belong to a very

to the Police Station and when to the Pradhan of the Panchayat and on the next day come to the Police Station. The FIR at the earliest could have been lodged on 16th or 17th. The mere fact that it has been lodged on 18th is not a sufficient ground to set-aside the conviction. In fact it appears that the incident occurred on 15th. The prosecutrix and her brother returned on 16th. They went to the Pradhan and the police post at Kafnu on 17th and finally to Police Station at Bhabhanagar on 18th. In any event for the reasons given by the prosecutrix and her witnesses and the fact that they belong to a very remote area the prosecution has sufficiently explained the delay. Similarly, the confusion in the dates is not so much of the making of the prosecutrix or her family but due to the laxity in police investigation as is apparent from the way in which the case has been handled rather mishandled by the police.

police took the matter extremely lightly. The Investigating Officer did not even think it proper to record her statement on the said day. PW-10 Duni Chand SI who was SHO of Police Station, Bhabhanagar on 18.7.1995, when examined in Court, stated that he could not give any reason for his omission in recording the statement of the prosecutrix. In reply to a Court Question he further stated that when he recorded the case diary on 18.7.1995 nothing was mentioned therein with regard to the reason for the delay in reporting the matter. He further states that the prosecutrix was present but her statement was not recorded on 18.7.1995 and was only recorded on 27.7.1995. Furthermore the Sub-Inspector did not even deem it fit to investigate the matter himself. He handed-over the investigation of such a serious offence to Head Constable Bhajan Singh. This shows total lack of responsibility by Sub Inspector Duni Chand in the discharge of his duties. In fact it was total callousness and negligence on his part. The

indeed complained to her that she had been subjected to sexual intercourse by the accused. Even the statement of Chhering Dolma was not recorded. No reason or justification for this omission was given. The accused was present at Bhabhanagar at 10.15 a.m. on 18.7.1995. There is no explanation as to why her medical examination was done on 20.7.1995 i.e. two days later. PW-9 Bhajan Singh states that on 26.7.1995 he went to the scene of occurrence. Why no investigation was done from 18.7.1995 till then is not explained by him also. In reply to a Court question he states that he did not record the statement of the prosecutrix under Section 161 Cr.P.C. on 26.7.1995 when she identified the pieces of bangles because he could not understood what she was speaking. Admittedly PW-1 Bhag Chand, PW-2 Ram Lal had joined the investigation on the said date. PW-6 was also present. Despite these people being present, the head constable did not deem it fit to record the statement of the prosecutrix. It is thus clear that the

talk or speak properly but was walking normally. She found scratch marks present on the body of the prosecutrix. There were scratches on the breast area and near the nipples and some on the back and shoulders. The doctor opined that there were signs of struggle but there was nothing suggestive of 'recent vaginal penetration'. She further stated that the scratches may be 5 to 6 days old but she could not tell the exact period since the possible duration of injuries had not been indicated in the medico legal report. To a specific question put to her by the Public Prosecutor she replied that there was nothing suggestive of 'recent sexual intercourse' and by recent she meant 3 or 4 days. The medical examination and the medico legal report shows that even the doctor treated the matter in a very casual manner and not with the seriousness it deserved. In cross examination she further states that her opinion that there was no vaginal penetration was based on the presumption that the victim having become a widow about

rape at all. The medical evidence in the present case by itself may not be sufficient to prove that there was a rape but on the other hand it also does not show that he prosecutrix was not subjected to sexual intercourse.

I am constrained to observe that even the medical expert who examined the prosecutrix did not display due care and caution while performing her official duty. She failed to mention the duration of injuries observed by her on the person of the prosecutrix. Secondly her observation that there is nothing suggestive of recent vaginal penetration is based on the presumption that since the prosecutrix was a widow there was no occasion for her to indulge in the act of sex. A medical expert is not supposed to make any such sort of hypothetical assumption. Despite this I find that the scratch marks on the back and especially on the breast area of the prosecutrix indicate that there was some struggle. In any event the accused has not set up a case of

the present case scratch marks were found on the body of the accused especially on the breast area and back.

The Apex Court in **State of H.P. vs. Lekh Raj and another**, (2000) 1 SCC 247, has held that even the absence of dead or mobile spermatozoa in the vagina of the prosecutrix is not sufficient to hold that she was not subjected to sexual intercourse. The Court further went on to hold that if the prosecutrix is believed to be truthful witness in her deposition no further corroboration is required.

In the present case the version of the prosecutrix inspires total confidence. It is supported by other material evidence. The learned trial Court rightly convicted the accused of having committed an offence under Section 376 IPC. Keeping all these facts in view, I am of the opinion that there is no merit in the appeal of the accused and the same is dismissed.

Before parting with the case I must however observe that as already detailed above, the police acted

role of a socially sensitized Judge and approached the case with requisite sensitivity required in such like matters. The role of the Doctor, a medical expert, is also not without blemish. The way she conducted the examination and prepared the medico legal report leaves much to be desired. In case the medical experts and the police behave in such a fashion it will indeed be difficult to obtain conviction in any case and persons accused of serious offences will be able to go scot-free.

Lastly I must observe that though a copy of the judgment was sent to the District Magistrate, Kinnaur in compliance to the provisions of Section 365 Cr.P.C., it appears that the District Magistrate took no note of the serious observations made by the trial Court with regard to the manner in which the case was mis-handled by the police and no action was taken by him. His behaviour and his lack of initiative in this respect also has to be condemned.

Chand (PW-10).

**April 3, 2006.** **( Deepak Gupta ),**
**PV** **Judge**